

LYCURGUS C. LEOCR, §§ 124-127, THE DECREE
OF DEMOPHANTUS AND THE LAW OF EUCRATES

In his speech against Leocrates, Lycurgus, having mentioned to the jurors in §§ 111-123 examples of severe punishment inflicted by their ancestors, passes on in §§ 124-127 to mention and comment on the stele about the traitors which had been set up in the Bouleuterion. He does not mention the actual words of the decree but lays stress on the oath contained in it and taken by the Athenians in order to protect themselves from the threat of tyrants¹.

The decree of Demophantus, quoted in full by Andocides on the Mysteries §§ 96-98 and mentioned by Demosthenes against Leptines § 159, was promulgated in July or August, 410 B. C., after the abolition of the "Five Thousand" regime². It was founded on an old aristocratic institution (θέσμιον) which went back to the middle of the sixth century (Swoboda, *Klio* 12 [1896] 343, n. 1); it is mentioned by Aristotle³.

¹ C. Leocr. 125 ἐψηφίσαντο γὰρ καὶ ὤμοσαν (sc. οἱ πρόγονοι); ib. 127 διορωμόκατε δ' ἐν τῷ ψηφίσματι τοῦ Δημοφάντου.

² See *Rehdantz*, *Lykurg*, App. 3, p. 184, n. 1; *Dalmeyda*, *Andocide Discours* p. 47 n. 1; *B. Meritt*, *Athenian Financial Documents* p. 106 ff. About the circumstances of its enactment see *P. Cloché* in *Mélanges O. Navarre* p. 81ff; cf. also *Transactions of the American Philological Association* 1955 p. 111 & n. 2.

³ Ἀθην. Πολ. 16. 10. Ἦσαν δὲ καὶ τοῖς Ἀθηναίοις οἱ περὶ τῶν τυράννων νόμοι πρῶτοι κατ' ἐκείνους τοὺς καιροὺς, οἱ τ' ἄλλοι καὶ δὴ καὶ δὴ μάλιστα καθήκων πρὸς τὴν τῆς τυραννίδος (κατάστασιν). Νόμος γὰρ αὐτοῖς ἦν ὁδὸς «θέσμια τάδε Ἀθηναίων ἐστὶ καὶ πάτρια· ἐάν τις τυραννεῖν ἐπανιστῶνται [[ἐπὶ τυραννίδι]] ἢ συγκαθίστη(τις) τὴν τυραννίδα, ἄτιμον εἶναι καὶ αὐτὸν καὶ γένος». Cf. *Busolt-Swoboda*, *Griechische Staatskunde*² München 1920-1926, 234¹—The word ἄτιμον in this institution was misunderstood even by Aristotle, see *Mathieu & Haussoulier*, *Arist. Const. d' Athen.*² p. 18 n. 1; cf. *Kahrstedt*, *Staatsg. und Staatsgehörige* p. 118f. and *C. Hignett*, *A history of the Athenian Constitution*, Oxford, 1952 p. 161, 313. It is in connection with this interpretation that Solon's fr. 23 5-7 refers. On this term see *G. Glotz*, *La solidarité de la famille* etc. p. 743 f.

The word "πάτρια" probably indicates that the institution was older than Solon. Its confirmation is inferred from Plutarch's "Solon" ch. 19.4f where Solon's amnesty law¹ excludes those who had been condemned for an attempt to establish tyranny. It seems that the original institution had been enacted by the aristocrats against the popular champions and the attempt of Kylon may have suggested the occasion for its enactment².

Next to this institution comes the Solonian law mentioned by Aristotle;³ the Areopagus could bring an action against those who had conspired⁴ to deprive the people of their political rights; this could now be effected by impeachment through the medium of the Solonian law.⁵ This law brought about two improvements by comparison with the existing institution. Firstly, a concrete procedure was introduced against the conspirators. Secondly, it succeeded, by supplying the new term *δήμου κατάλυσις*, in abbreviating but at the same time clarifying the old legal formulae dealing with this public offence⁶. Incidentally the old terminology reached us in a fragmentary condition⁷ whereas the new one firmly established itself in current use.

The provision against those who conspire to deprive the people of their political rights was mentioned for the third time in the heliastic oath which was introduced in 501/0 B. C.⁸ Demosthenes in his speech against Timocrates § 144 mentions a clause of the oath, οὐδέ δῆσω Ἀθηναίων οὐδένα, ὅς ἂν ἐγγυητάς τρεῖς καθιστῆ τὸ αὐτὸ τέλος τελοῦντας, πλὴν ἐάν τις ἐπὶ προδοσίᾳ τῆς πόλεως ἢ ἐπὶ καταλύσει τοῦ δήμου συνίων ἄλφ κτλ. The

¹ The wording, however, of this law was apparently taken from a later revision of the Solonian code, see *Hignett* l. c.

² For a new discussion of the views expressed see *M. Ostwald*, Athenian Legislation against Tyranny. Trans. Amer. Philol. Assoc. 1955 p. 106ff.; he suggests that this law is Draconian.

³ Ἀθην. Πολ. 8. 4 καὶ τοὺς ἐπὶ καταλύσει τοῦ δήμου συνισταμένους ἔκρινεν (sc. ἢ τῶν Ἀρσπαγιδῶν Βουλῆ), Σόλωνος θέντος νόμον εἰσαγγελίας περὶ αὐτῶν. Cf. *Plut.*, Sol et Popl. comp. 2.

⁴ On the internal party factions at Athens at this time see *Seltman*, Athens, Its history and Coinage before the Persian Invasion, p. 23ff.

⁵ It is probable that the term *εἰσαγγελία* in Solon's law did not yet have the technical legal meaning it acquired later on but it simply meant «μῆνυσις, εἰσαγγελία». In such a case the later well-known provision of *εἰσαγγελία* regarding those who conspired against the democracy (*Hyper. pro Eux.* 8) will bear no relation to the Solonian enactment.

⁶ About the related term *κατάλυσις τῆς δημοκρατίας* see now Trans. Amer. Philol. Assoc. 1955, p. 113.

⁷ Usually read after Kaibel & Wilamowitz *τυραννίδος* (κατάστασις). See *Sandys*, Const. of Athens² ad loc.

⁸ Ἀθην. Πολ. 22. 2, Demosth. xxiv 148 ascribes it to Solon.

last clause is identical with the one mentioned by Hyperides in the case of *eisangelia*.

Two references in Aristophanes show that in public prayers uttered before the work of the assembly began there was an attack on the tyrants in much the same phraseology as the one used in the laws against them. Of course it must be borne in mind that in both passages we have a parody and not a true reproduction of any expression of the law. The first passage occurs in the *Birds* (produced in 414 B. C.) v. 1073/4 (ἐπαναγορεύεται) ... ἦν τε τῶν τυράννων τίς τινα | τῶν τεθνηκότων ἀποκτείνῃ, τάλαντον λαμβάνειν. The facts to which lines 1071-1074 of the comedy refer are given by the scholiast, who quotes from Craterus and Melanthius the actual words of the resolution passed by the Athenians. The expression τῶν τυράννων τῶν τεθνηκότων only refers to the long standing freedom of Athens from tyranny¹. The second passage occurs in the *Thesmophoriazusae* (produced in 411 B. C.) and the words of the comic poet, vv. 338/9 ἡ τύραννον ἐπινοεῖ | ἡ τὸν τύραννον συγκατάγειν directly relate to the law against the tyrants. The whole passage, however, shows that it was mainly those people who were for making overtures to Persia that were to be affected by the curse². This is indicated by Dinarchus ii 26 who ascribes to the «earliest lawgivers» a provision according to which a curse against bribed speakers was pronounced in each Assembly meeting. It may be added that clauses from the anti-tyraunic law were inserted also in treaties between Athens and other states during the fourth century cf. for instance IG II² 112 (Add. p. 658), 1.25/6.

When Demophantus, charged with a special commission from the people³, moved this decree to deal with the serious internal situation of Athens at that time, he took the previous laws into consideration. His decree became famous in antiquity and though it did not succeed in saving Athens from the tyranny of the Thirty it was referred to⁴ several times. This law as quoted by Andocides embraces the two cases in which tyranny is usually established namely either τὴν δημοκρατίαν καταλύῃ or ἀρχὴν τινα ἀρχὴ καταλελυμένης τῆς δημοκρατίας. The term *ἄτιμος* of the old

¹ Cf. *Wasps* 488ff. ὡς ἀπανθ' ὁμῶν τυραννίς ἐστὶ καὶ ξυνωμόται, | ἦν τε μείζον ἦν τ' ἐλαττον πρᾶγμα τίς κατηγορῆ, | ἡς ἐγὼ οὐκ ἤκουσα τοῖονομ' οὐδέ πεντήκοντ' ἐτῶν.

² Cf. *Ar. Thesmoph.* vv. 335sq. εἰ τις ἐπιβουλεύει τι τῷ δήμῳ κακὸν | τῷ τῶν γυναικῶν ἢ πικηρυκεύεται | Εὐριπίδῃ Μήδοις <τ'> κτλ. cf. *M. Ostwald*, l.1. p. 112 n. 48. cf. *Isocr.* iv 157 ἐν δὲ τοῖς συλλόγοις εἶτι καὶ νῦν ἀράς ποιοῦνται... εἰ τις ἐπικηρυκεύεται Πέρσαις τῶν πολιτῶν κλπ.

³ Cf. *F. Smith*, *Athenian Political Commissions* p. 71ff., *Bonner & Smith*, *The administration of Justice from Homer to Aristotle*, vols. i-ii, Chicago, 1930-1938, ii, 47.

⁴ Besides the previous references add [Plutarch] *Vitae X oratt.* 851 F.

institution is now replaced by *πολέμιος ἔστω* more concrete and certainly more suitable to fifth-century politics, which is further explained by the contemporary terms *κτενῶ* and *νηποινεὶ τεθνάτω*¹.

It does not expressly mention the punishment of the *genos* contained in the old institution, but in addition it prescribes honours to the executioner and to his descendants.

Lycurgus, quoting the law, identifies the country (=Attica and Athens) with democracy; so in *Against Leocrates* 127 *διωμώκατε δ' ἐν τῷ ψηφίσματι τοῦ Δημοφάντου, κτείνειν τὸν τὴν πατρίδα προδιδόντα*. The words which follow *καὶ λόγῳ καὶ ἔργῳ καὶ χειρὶ καὶ ψήφῳ* seem to correspond to the actual words of the decree². Similarly in § 125 the words *ἐάν τις τυραννίδι ἐπιτιθῆται ἢ τὴν πόλιν προδιδῶ ἢ τὸν δῆμον καταλύῃ* render the terms of the decree in *Andoc. i. 97* in such a manner, however, that the orator's case receives support. In particular, the expression *ἢ τὴν πόλιν προδιδῶ*³, which does not occur in the decree, is directed against Leocrates. The word *καθαρόν* in § 125 corresponds to *δοιον* of *Andocides I. 97*. The words of Lycurgus *ἂν τις αἰσθηται μόνον μέλλοντας αὐτοὺς τούτων τι ποιεῖν, ἀποκτείνειν συνώμοσαν*, were not in any way part of the decree itself and it is surprising that *Rehdantz* (*Lykurg* p. 185) reached this conclusion, since the same words occur in § 125 where the actual words of the decree are paraphrased (*τὸν αἰσθανόμενον καθαρόν εἶναι ἀποκτείναντα*).

Two small problems are simultaneously raised, furthermore, by Lycurgus' reference to the stele of Demophantus. First Lycurgus frankly states (§ 124) that the decree was enacted just after the fall of the Thirty, i.e. in 403 B.C. Because of this assurance on the part of the orator it has been thought by some scholars that the decree was revived after the fall of the Thirty⁴, or that we are confronted with one of the historical slips that one meets in *Against Leocrates*⁵. Yet it seems to us that the

¹ This expression occurs for the first time in *IG I² 10. 33/4* (? 453/2 B.C.); cf. *Sylloge Inscriptionum Graecarum*³, ed. *W. Dittenberger*, (Leipzig 1915-24), 194. 10, but it comes in the law of Draco *IG I² 115, 37 f.* For its use see *Bonner & Smith*, *The administration of Justice etc.* ii 203 f.

² For a similar formula cf. *Aesch. II 115; III 109. 120*. For a similar connection as regards the diction cf. *Demosth. xviii 185 etc.*

³ Cf. one of the provisions of the so-called *νόμος εἰσαγγελτικός*, *Hyper. pro Eux. § 22*.

⁴ See *Petrie*, *Lycurgus the speech against Leocrates*, ad loc.

⁵ Cf. c. *Leocr. 62* (synoecism of Messene), 70 (about the Lacedae-

orator mentions this date on purpose. For in doing so he has the benefit of an argument *ex silentio*, namely that it was partly for lack of such a law that the Thirty were able to establish themselves as tyrants. On the other hand, he expressly states that the tyranny of the Thirty was such a great calamity that it compelled Athens to take these precautions for the maintenance of the democracy.

The second point is this: while Lycurgus refers to the decree of Demophantus which was moved about eighty years before the date of his speech, it has recently become known that another law against tyranny and subversion was passed only six years before this trial by the orator Eucrates of Peiraeus¹.

It is understood that the law of Eucrates was also set down by the nomothetai and it mostly coincides with the text of Demophantus (see Trans. Amer. Philol. Assoc. 1955, p. 121), though the former is shorter as it lacks the oath². The stipulations of the new law on certain points are more elaborate than those of the Demophantus decree and it is noteworthy that the wording of the aristocratic institution reappears: ἐάν τις ἐπαναστῆ τῷ δήμῳ ἐπὶ τυραννίδι ἢ τὴν τυραννίδα συγκαταστήσῃ is used side by side with the later phraseology ἢ τὸν δῆμον τὸν Ἀθηναίων ἢ τὴν δημοκρατίαν τὴν Ἀθήνησιν καταλύσῃ³.

monian commander and the attitude of Aeginetans at Salamis). 71 (about the mission of Alexander King of Macedon to Athens), 122 etc.

¹ Found in the Agora in 1952, it was published by B. Meritt in *Hesperia*, 1952, 355-359 cf. *Id. Hesperia*, 1953, 129; *H. Thompson* *ib. p. 51f.*, *Supplementum Epigraphicum Graecum* (Leyden 1923) 12, (1955) no. 87. See further M. Ostwald in *Trans. Amer. Philol. Assoc.* 1955 pp. 119-128.

² The oath contained in the decree of Demophantus has not yet sufficiently drawn the attention of scholars. Part of it is related to the old Draconian law on tyranny, see *Trans. Amer. Philol. Assoc.* 1955, p. 112. Oaths are often mentioned in laws or decrees (cf. IG I² 51, IG II² 97. 124 etc.); at other times an alliance or treaty takes the form of an oath (cf. IG I² 39. 90, IG II² 236 *Sylloge Inscr. Graec.*³ 184) or contains an oath IG xii 5 (1) n. 109 (a. 411) see *B. Haussoulier*, *Traité entre Delphes et Pellana* p. 10ff. especially p. 12, but in the decree of Demophantus the oath is in oratio recto and is a separate piece inserted into the main body of the document. It strongly reminds one of the circumstances under which it was enacted.

³ It is possible that the wording of the aristocratic institution survived into the fourth century but it so happened that it was not preserved in extant texts; in such a case it seems probable that in Arist.

Besides the general provisions on one point of Demophantus' decree, namely ἡ ἀρχὴν τινα ἀρχὴ καταλελυμένης τῆς δημοκρατίας, the new law works out a definite ordinance which prohibits the members of the Areopagus attending its sessions, or taking any counsel whatsoever: μὴ ἐξεῖναι δὲ τῶν βουλευτῶν τῶν τῆς βουλῆς τῆς ἐξ Ἀρείου Πάγου καταλελυμένου τοῦ δήμου ἢ τῆς δημοκρατίας τῆς Ἀθήνησιν ἀνιέναι εἰς Ἀρείον Πάγον, μηδὲ συγκαθίξειν ἐν τῷ συνεδρίῳ μηδὲ βουλεύειν μηδὲ περὶ ἑνός¹.

On a second point there exists a slight disagreement between the two texts. While the decree of Demophantus left open the question of the genos-punishment², Eucrates re-introduced it: ἀτιμὸς ἔστω καὶ αὐτὸς καὶ γένος τὸ ἐξ ἐκείνου.

In his commentary Professor B. Meritt did not remark on Lycurgus' omission to quote Eucrates' anti-tyranny law instead of that of Demophantus. There is no doubt that Eucrates was on the same side as Lycurgus in Athenian politics; he was evidently more radical than Lycurgus, being strongly anti-Macedonian and deeply concerned for the preservation of the democracy. The decree, as Professor Meritt suggested, was passed in a time of great stress, not only for Athens but for the whole of Greece, when every city-state was in danger of losing her autonomy. This was especially true for Athens where the pro-Macedonian party was at this time extremely active³. It seems, however, that the main provision of the new enactment⁴ was that which concerned the Areopagus. One may, therefore, say that we do not have, strictly speaking, a new law, but a modification or even better an elucidation of the previous law, namely of the

¹ Ἀθην. Πολ. 16. 10 one should read εἰάν τινες· [τυραννεῖν] ἐπανιστῶνται ἐπὶ τυραννίδι; for two reasons: (i) τυραννεῖν seems a marginal gloss on ἐπανιστῶνται ἐπὶ τυραννίδι which, as often happens, was taken by a later scribe into the text; (ii) we do not see how the introduction of the words ἐπὶ τυραννίδι into the text is to be explained. See another suggestion by *M. Ostwald* 1. 1. p. 121 n. 97.

² The last clause as understood by *M. Ostwald* 1. 1. p. 120 "or participate many of its deliberations" seems to us inaccurate.

³ Cf. *Trans. Amer. Philol. Assoc.* 1955, p. 114.

⁴ For further suggestions of the conditions related with the enactment of this law see *Trans. Amer. Phil. Assoc.* 1955, p. 123ff. "It is in the context of these anti-Macedonian measures that we can now also place the law of Eucrates", *ibid.* p. 127.

⁵ For other differences, less significant cf. *Ostwald* 1. 1. p. 122.

clause ἡ ἀρχὴν τινα ἀρχὴ καταλελυμένης τῆς δημοκρατίας¹. Was membership of the Areopagus an office which the decree of Demophantus prohibited to be held? That was not clear² and hence the need of the addition of a special ordinance concerning this body. A somewhat general provision of the older anti-tyranny law becomes a definite prohibition to prevent the venerable court of the Areopagus from giving legal sanction to a tyranny, should one be established. At the time when the law was passed the majority of its members were on the democratic side³ but it was of future changes that the law-giver was afraid. This may sound a little strange as the Areopagus had more than once been entrusted with the guarding of the state against tyrants. Besides the testimony of Aristotle that before the time of Draco the Areopagus dealt with all important cases (Ἀθην. Πολ. 3. 6)—and it must be assumed with those connected with the establishment of tyranny (cf. Bonner & Smith, *The administration of Justice* etc. i 108) as well—we are informed⁴ that after the defeat of Aegus Potami in 405 B. C. the Areopagus played the same role.

On the other hand, it is a well-known fact that several movements for the restoration of the political authority and the constitutional rights of the Areopagus as the supreme court of the Athenian state had been developed by conservative groups. It is in this framework that Isocrates' Areopagiticus must be fixed though Isocrates was not primarily a politician but "a moralist and educator"⁵. Yet how well-founded were the fears of Eucrates and his colleagues is shown by the establishment of the old

¹ Cf. also the part of the oath ἡ ἀρχὴν τινα ἀρχὴ καταλελυμένης τῆς δημοκρατίας.

² Cf. Lys. xxvi. 11 ταύτης δὲ τῆς ἀρχῆς ἡξιωμένος αὐτὸς καθ' αὐτὸν ἀρξῆσι, καὶ μετὰ τῆς ἐν Ἀρείῳ Πάγῳ Βουλῆς τὸν ἅπαντα χρόνον τῶν μεγίστων κύριος [τε] γενήσεται.

³ See, however, M. Ostwald's approach l. l. p. 126.

⁴ From the decree of Patrocleides in Andoc. I 79. On this point see *Vinogradoff*, *Histor. Jurisprudence*, vol. ii p. 181f; on the decree of Patrocleides in general see *Gernet* in *Rev. d. Phil.* 1931, 308sqq.

⁵ See *W. Jaeger*, in *Athen. Stud.*, Harv. St. Class. Phil., suppl. vol. I, p. 439. In this long paper besides the date of the speech the history and extent of this tendency as well as its later application by Demetrius of Phaleron are examined.

πάτριον ἀπὸ τιμημάτων πολιτεῖα in 322 B. C. and the tragic end of the orator Eucrates¹.

Now Lycurgus in mentioning the anti-tyrannic law would, one might expect, refer to the actual law and not to its modification. In the second place Demophantus' decree, besides being much more well-known, contained an oath on which Lycurgus, as is well known, was very fond of dwelling. On the other hand, being a nobleman he was, so to say, bound to be a supporter of the Areopagus always thought a conservative body², and did not perhaps like to offend its susceptibilities by mentioning the law of Eucrates. Last but not least Lycurgus was at that point of his speech mentioning examples which would help the jurymen understand the spirit of their ancestors and the decree of Demophantus was surely their work, while the law of Eucrates was not³. The latter belonged to their contemporaries.

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¹ Cf. Lucian, Dem. enc. 31; Meritt I. I. 357 n. 1.

² Cf. c. Leocr. 52.

³ This argument, as it seems to us, is further strengthened by the fact that Demophantus' decree had been, as far as its provisions dealing with the κατάλυσις τῆς δημοκρατίας are concerned, by the time of Lycurgus superseded by the νόμος εισαγγελτικός cf. Trans. Amer. Philol. Assoc. 1955, p. 115. However, Ostwald's arguments as regards Lycurgus' not mentioning the law of Eucrates are devoid of any significance in view of his discarding the evidence furnished by the text of c. Leocr. 124, namely that the orator explaining the attitude of their ancestors towards those who broke the city's laws (τὴν τῶν προγόνων γνῶναι διάνοιαν, ὡς εἶχον πρὸς τοὺς παρανομοῦντας εἰς τὴν πόλιν). Therefore it is not indispensable and we do not believe that the law of Eucrates necessarily was repealed by the time of Lycurgus' speech.